(7)

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM: **Hon'ble Shri L.C. Bhadoo, J, &**
Hon'ble Shri V.K. Shrivastava, J.

CRIMINAL APPEAL NO.1366/2000

Lala Pandey

Vs

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
V.K.Shrivastava
Judge

JUDGE
9/12/2005

Hon'ble Shri L.C. Bhadoo, J.

Sd/-
L.C.BHADOO
Judge

Post for 16/12/2005

Sd/-
JUDGE
15/12/2005

(25)

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri L.C. Bhadoo, J &
Hon'ble Shri V.K. Shrivastava, J.

CRIMINAL APPEAL No. 1366/2000

Appellant — Lala Pandey,
S/o. Sarvan Padey,
(Kumhar), age 42 years,
R/o. Kumhari,
P.S. Bilaigarh,
Dist. Raipur, CG.

Vs

Respondent — State of Chhattisgarh

PRESENT

Mr. Abhay Tiwari, Counsel for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the respondent/State.

JUDGMENT

(Delivered on 16/12/2005)

Per Vijay Kumar Shrivastava, J.

This appeal is directed against the judgment of conviction and order of sentence passed on 28/02/2000 by the Ist Additional Sessions Judge, Baloda Bazar, in Sessions Trial No. 145/99 whereby the learned Ist Additional Sessions Judge after holding the accused/appellant guilty of the offence punishable under Section 302 of the I.P.C., convicted and sentenced him to undergo imprisonment for life and to pay fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for 6 (six) months.

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2) Facts material for disposal of this appeal, in brief, are that on 23/01/1999 at about 6.15 p.m. in the evening the deceased Chotu was sitting idle near the hotel belonging to Jansingh. Appellant came there and started abusing deceased Chotu and on his protest assaulted him with knife over his neck and on frontal area of head. Stab wound caused on the neck was penetrating into respiratory passage. The wound was bleeding. Chotu fell down and thereafter appellant left the knife on the spot and fled away. Sudarshan who was in the Pan (Betel) shop, saw the incident, called Kartik Ram who was sitting near the oven drinking tea. Kartik Ram rushed to the spot and tried to stop the flow of blood from the wound and sent intimation to parents of Chotu and Kotwar. After arrival of father and uncle of Chotu, he took them to Police Station Bilaigarh and lodged report. Police registered a case and sent the victim – Chotu for medical examination.

3) Chotu was brought to Primary Health Centre for medical examination where his dying declaration was recorded by the Executive Magistrate in the night at 9.50 p.m. Deceased Chotu stated in his dying declaration that Lala Pandey assaulted him by knife.

4) Doctor Narayan Singh examined Chotu. On examination he found the injury on the neck to be a grievous one, therefore, referred the injured for treatment to Medical College, Raipur. Chotu was taken to Medical College, Raipur for treatment,

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however, Chotu who was admitted in Medical College, Raipur for treatment died in the mid-night. A report was sent by Medical College, Raipur, to Police Station, Modhapara, Raipur where merg intimation was recorded.

5) During investigation blood stained gamchha, one pair of slippers, knife lying on the floor of hotel, control earth and blood stained earth were collected and seized. Map was prepared. Appellant's shirt worn by him was also seized after removing the same from his body. Statements of witnesses were recorded under Section 161 of the Cr.P.C. Assistant Sub-Inspector of Police Y.N. Dubey prepared the Panchnama of dead body of Chotu and sent the same for autopsy. Doctor Arvind Nerelwar conducted the post mortem on the body of Chotu, described all the injuries found on the body in his report and was of the opinion that the cause of death was asphyxia due to injury over the neck and the death was homicidal in nature. Clothes recovered from the dead body were collected. These clothes along with other articles seized were sent to F.S.L., Raipur for examination. Chemical examiner after examining the articles reported that except control earth, all the articles were stained with blood.

6) After completion of investigation charge-sheet was filed in the Court of Judicial Magistrate First Class, Baloda Bazar, who committed the case to the Court of Session for trial. Charge under Section 302 of the I.P.C was framed against the accused/appellant, the same was read over and explained to him who abjured his guilt and pleaded innocence.

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7) Learned trial Court after due appreciation of the evidence held that Chotu died as a result of injury caused to him and his death was homicidal in nature. Although learned trial Court did not believe the dying declaration recorded by Executive Magistrate – Shri Awadh Singh Rana (PW/15) yet relying on eye-witnesses duly supported by other evidence held that the appellant intentionally killed Chotu and accordingly convicted and sentenced him for committing offence punishable under Section 302 of the I.P.C.

8) Doctor Narayan Singh (PW/14) soon-after the incident examined Chotu. His report is Ex.P/17. He deposed that on examination he found one incised wound over frontal area on left side and second incised wound on neck. He referred the patient for examination and treatment to Medical College, Raipur. On 24/1/1999 Doctor Arvind Neralwar (PW/11) conducted post mortem examination on the body of Chotu. He deposed that on examination he found the following ante mortem injuries:

> *1) Stab wound in the size of 3.5 cm over frontal neck at the level of thyroid cartilage 1 cm left to mid line, penetrating into respiratory passage.*
>
> *2) Stab wound 3.5 cm over frontal area on left side.*

9) He further deposed that on internal examination he found that blood was present in respiratory track and tracheal rings were fractured. Blood clots present beneath left frontal area. In his opinion, the cause of death was asphyxia due to injury over

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the neck. The injuries were caused by sharp weapon and were sufficient to cause death in ordinary course of nature.

10) The evidence of Dr. Narayan Singh (PW/14) and Doctor Arvind Neralwar (PW/11) has not been challenged so far it relates to injuries, its nature and cause of death. Therefore relying on the evidence of both these witnesses and their reports Ex.P/17 and Ex.P/16, it has been proved that the deceased Chotu died as a result of stab injuries caused to him on his neck and head by sharp weapon and the death was homicidal in nature.

11) Fathal, PW/1 and Kartik Ram (PW/2), have partially supported the prosecution story. Witness - Kartik Ram (PW/2) has been declared hostile by the prosecution. Both the witnesses have deposed that they were sitting in hotel, they heard the alarm raised by Sudershan that Lala Pandey assaulted Chotu. They rushed to the spot and found blood flowing from the neck of Chotu. Although they did not say that they witnessed inflicting injuries to Chotu by the appellant, yet did not favour appellant by anything deposing beneficial to him.

12) Sudharshan (PW/3) an eye-witness to the incident was sitting along with Dev Narayan in his Pan (Betel) shop which was adjacent to the hotel. He deposed that Chotu and appellant were standing. Chotu raised alarm that Lala Pandey killed him. He rushed to the spot, saw the incident and also saw appellant fleeing away from there. Chotu fell down. He had received injuries on his neck and head. Dev Narayan (PW/6) deposed that

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Chotu and Lala Pandey who were present in the shop, were quarrelling, at that time appellant assaulted Chotu by knife on his neck and head. Jhan Singh (PW/4) who is the owner of the hotel and father of witness Sudarshan, has deposed that around 6.00 – 6.15 pm in the evening he was in his hotel, heard alarm of his son – Sudarshan who raised noise to the effect that Lala Pandey killed Chotu. Hearing the noise he came out of the hotel and saw Chotu lying on the ground and blood was flowing from his neck. Ramrekha (PW/5) who is the son of Kartik Ram also deposed that his father raised alarm that Lala Pandey has assaulted Chotu. He reached the spot and found Chotu lying on the ground in a pool of blood. Chatram (PW/7) who is the father of deceased Chotu has deposed that when he reached, at that time, his son was conscious and his son appraised him that Lala Pandey of Kumhari assaulted him with knife.

13) Vide Ex.P/6, one shirt worn by the appellant – Lala Pandey was seized after removing the same from his body which has been proved by witness PW/4 Jhan Singh and PW/10 SHO S.L. Chouhan. PW/10- SHO S.L. Chouhan has also proved the covering letter (Ex.P/12) vide which seized articles were sent to F.S.L. Raipur for examination. Report received from F.S.L. Raipur is Ex.P/15 which proves that the shirt seized from the appellant has contained blood stains. Appellant did not give any explanation to it as to how his shirt contained blood stains. This circumstance also supports the oral evidence.

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14) Learned Court below minutely appreciated the evidence on record and also considered various points raised by the counsel for the appellant and after due and meticulous evaluation held that the appellant was the person who inflicted injuries on the body of Chotu. We have gone through the statements of witnesses Sudarshan (PW/3), Dev Narayan (PW/6) who witnessed the incident and also gone through the statement of Chhatram (PW/7) who has proved oral dying declaration given by his son. We have also gone through the statements of Jansingh (PW/4) and Ramrekha (PW/5). We find nothing substantial in their cross examination so as to disbelieve their testimony. We are of the opinion that the evidence of Sudarshan (PW/3), Dev Narayan (PW/6) duly corroborated with the evidence of Fadal (PW/1), Kartik Ram (PW/2), Jansingh (PW/4), Ramrekha (PW/5), Chhatram (PW/7) and other circumstances reliable which clearly proves that the appellant was the author of injuries found on the neck and head of the deceased Chotu.

15) Learned counsel for the appellant contended that the appellant while sudden quarrel in a spur of moment without premeditation caused injuries to Chotu, therefore, his case is covered under Exception 4 to Section 300 of the I.P.C., therefore, the conviction recorded under Section 302 of the I.P.C., is erroneous instead he should have been convicted under Section 304 Part I or Part II of the I.P.C. Learned counsel for the appellant in support of his contentions, has placed reliance on the judgment rendered by the Hon'ble Apex Court in the matter of ***Shanmugam alias Kulandaivelu Vs. State of Tamil Nadu,***

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reported in 2003 CRI. L.J. 418. On facts the judgment relied on by the appellant is distinguishable with the present case.

16). Hon'ble the Apex Court, rendering the judgment in the case of ***Ghapoo Yadav and others vs. State of M.P., reported in (2003) 3 SCC 528,*** observed in para 10 that –

Para 10 : "The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused : (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must

> have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in the Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"."

17) For bringing the case within four corners of Exception 4 to Section 300 of the I.P.C, Hon'ble Apex Court has very specifically led four conditions in the case of ***Ghapoo Yadav*** (supra). In the instant case, it is established that the appellant was carrying the knife. Although Dev Narayan (PW/6) in his statement has stated that the appellant and Chotu were quarreling, but no one unveiled the nature of the quarrel and reason behind it. Appellant did not cause a single blow, but by the sharp weapon caused injury over the neck i.e., a vital part and again caused injury over frontal area of head which is also a vital part by knife. The injuries caused by the appellant were proved by medical evidence to be sufficient to cause death in ordinary course of nature. All the conditions required for a case to fall under Exception 4 to Section 300 of the I.P.C., are not available herein in the instant case.

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18) Culpable homicide is defined in Section 299 of the I.P.C. Section 300 of the I.P.C. defines culpable homicide amounting to murder and also defines culpable homicide not amounting to murder. From the evidence discussed above and medical evidence available on record, appellant's act clearly falls under Clause (3) of Section 300 of the I.P.C., and does not come within the edifice of Exception 4 to Section 300 of the I.P.C. Therefore, the contentions raised by counsel for the appellant have no force and cannot be accepted. We are of the considered opinion that the learned trial Court has rightly held the appellant guilty of murder punishable under Section 302 of the I.P.C and has rightly sentenced him.

19) In the result, the appeal fails and is dismissed. The conviction and sentence passed by the trial Court are maintained. Consequently, M.Cr.P.No.3263/2004 and I.A.No.4506/2004 stand disposed of.

Sd/-
V.K.Shrivastava
Judge

Sd/-
L.C.BHADOO
Judge

Raju